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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,797	07/21/2005	Rory Garth Hocking	93784	8337
24628	7590	12/10/2008	EXAMINER	
Husch Blackwell Sanders, LLP			MATTHEWS, TERRELL HOWARD	
Husch Blackwell Sanders LLP Welsh & Katz			ART UNIT	
120 S RIVERSIDE PLAZA			PAPER NUMBER	
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CHICAGO, IL 60606			MAIL DATE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,797

Applicant(s)

HOCKING, RORY GARTH

Examiner

Terrell H. Matthews

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 17-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

FINAL REJECTION

Applicant's arguments filed 8/20/2008 have been fully considered but they are not persuasive for reasons as detailed below.

The prior art rejections are maintained or modified as follows:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-4, 8, 10-13 rejected under 35 U.S.C. 103(a) as being unpatentable over Zachary (US-5590794) in view of Alexiou (US-6688238).

Zachary (Fig. 1-11) teaches a stand for mail sorting or other applications, which is of modular construction and includes

one or more upright tubular frame members (vertical members 22 where fig. 1, 2 show various connections between upper part of frame comprising single length tube forming inverted-U with upper part of upright frame members);

a shelving system (tray and bin near 20 and horizontal support members; fig. 2-6 showing bin and shelf structure with partitions) including one or more shelves each connectable to the frame members, enabling the shelves to be mounted to and removed from the upright frame members from one side or from the front of the frame members; Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight

as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above is certainly capable of having the separate components shown being fitted together. Zachary does not disclose wherein the shelves are adapted to be engaged with the frame members along a single side of the shaft by one or more bracket parts adapted to enable the shelves to be engaged with and disengaged from the upright members. Alexiou (Fig. 1-4) teaches a stand of modular construction including one or more upright tubular frame members (12); a shelving system (20) including one or more shelves each connectable to the frame member by one or more bracket parts (clip portion 32 shown in fig. 2 as including a hollow interior defined between an upper portion for engaging an upright frame member from the rear and a lower portion for engaging the upright frame member from the front when a shelf is mounted to the upright member and an entry passage in the form of a longitudinally extending aperture on one side of the bracket part). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above, and the bracket part in particular is certainly capable of enabling the shelves to be mounted to and removed from the upright frame members from one side or from the front of the frame members so that the shelves may be mounted to the upright frame member(s) by tilting a front of a shelf upwardly relative to its normal position when mounted to the upright frame member(s), moving the shelf on to the upright member(s) from one side so that the tubular upright member(s) pass

through the entry passage into the bracket(s), and then dropping the front of the shelf downwardly, to engage the shelf in position on the upright frame member(s) (and the reverse for removal). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Zachary to include the bracket mechanism of Alexiou wherein the shelves were attached with a bracket in the manner as illustrated so that the shelves could be engaged and disengaged from the upright frame member for easy movement and installation of shelves. Applicant is reminded that using brackets to engage and disengage shelves to shafts or upright members is generally known in the field of the art. Moreover, as stated above claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed.

Claim 14-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Zachary in view of Alexiou in and view of Dohnalik (US 5,644,993).

Zachary and Alexiou as set forth above teach all that is claimed except for expressly teaching the upright frame member(s) include a series of apertures or indentations along the length(s) thereof into which a protrusion from the interior of the bracket part(s) may locate when shelves are mounted to the upright frame members. This feature, however, is well-known in the bracket arts. For instance, Dohnalik teaches that this type of bracket connection allows one to secure and adjust the shelving system to a variety of locations (Abstract; fig. 2 showing bracket 18 with protrusion near 48).

Further, it would be obvious to one with ordinary skill in the art to modify the base reference with these prior art teachings to arrive at the claimed invention. The rationale for this obviousness determination can be found in the prior art itself as cited above. Further, the modification to arrive at the claimed invention would merely involve the substitution/addition of well-known elements with no change in their respective functions (i.e., addition of protrusion-aperture system). Moreover, the use of prior art elements according to their known functions is a predictable variation that would yield predictable results, and thus cannot be regarded as a non-obvious modification when the modification is already commonly implemented in the prior art. See MPEP 2143. Further, the prior art discussed and cited demonstrates the level of sophistication of one with ordinary skill in the art and that these modifications would be well within this skill level. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Alexiou for the reasons set forth above.

Response to Arguments

Applicant's arguments filed 8/20/2008 have been fully considered but they are not persuasive. In particular, Applicants focus on "the shelves adapted to be engaged with the frame members along a single side of the shaft by one or more brackets", is illustrated and taught by Alexiou, to the point that it would have been obvious to modify Zachary in view of Alexiou as disclosed in the above discussed prior art rejections, wherein the shelves of Zachary included brackets as taught by Alexiou to allow shelves

to be attached, engaged and disengaged from the upright frame members.

Consequently, as a review of the prior art undermines Applicant's arguments, the claims stand rejected. Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicants' amendment necessitated any new grounds of rejection present in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action. Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicants' amendment necessitated any new grounds of rejection present in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrell H. Matthews whose telephone number is (571)272-5929. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick H. Mackey/
Supervisory Patent Examiner, Art
Unit 3653

THM